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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1295 (XLIV).

[27 January 1997]

The situation of human rights in the Sudan

1. The Lawyers Committee for Human Rights would like to express its serious concern about human rights protection in the criminal justice system in the Sudan and the impact of Islamization on the Sudan's obligations under international law. These concerns are based on the findings of our mission to the Sudan, upon the invitation of the Chief Justice of the Sudan, in April 1995, and the subsequent release of our 1996 report Beset by Contradictions: Islamization, Legal Reform and Human Rights in Sudan.

2. After a coup d'état in June 1989, which installed the Government of the Revolutionary Command Council headed by Lieutenant-General Omar Hassan al-Bashir, President Bashir called for a new Sudanese society based on

divinely revealed Islamic law. Citing political chaos, moral degeneration and rampant lawlessness, President Bashir vowed to rescue the Sudan through adherence to Islamic principles derived from the Qur'an, Islam's holy book. Seven years later the Sudan remains a deeply divided country whose Government has come under sharp criticism from the United Nations and human rights organizations for a plethora of abuses linked to its repression of opposition, such as arbitrary detention, torture, unfair trial procedures and repressive security measures.

3. In the area of the rule of law, these seven years have been characterized by a serious decline in the quality of the administration of justice. The criminal justice system has been amended by the Government's Islamization programme to conform to the Government's interpretation of traditional Islamic legal principles. The Sudanese Government has criminalized political and ideological dissent, engages multifaceted security forces to monitor citizens' behaviour, and has installed a system of rewards and punishments based on adherence to government policies and public observance of Government-approved Islamic practices. Though more subtle than mass arrests and summary executions, these control mechanisms are equally debilitating to the fundamental freedoms of Sudanese citizens. This raises serious questions about human rights protections in the criminal justice system and the impact of Islamization on Sudan's obligations under international law.

4. Based on its findings, the Lawyers Committee would like to ask the Commission on Human Rights to endorse the recommendations set out below in relation to the general human rights protection and the judicial system in Sudan:

(a) Recommendations on general human rights protection

(i) The Government of the Sudan should comply with its human rights obligations under international law and take steps to ensure that national legislation is brought into conformity with the binding international treaties to which the Sudan is a signatory, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government of the Sudan should take immediate steps to ratify the Convention against Torture. In the meantime, the Government of the Sudan should refrain from actions which contradict the provisions of this convention;

(ii) The Government of the Sudan should end the state of emergency and end all derogations from the rights enshrined in the International Covenant on Civil and Political Rights. A constitutional framework should be established to protect the rights of Sudanese citizens;

(iii) The Government of the Sudan should ensure that all police forces receive proper training which complies with international standards for law enforcement personnel as set forth in the United Nations Code of Conduct for Law Enforcement Officials. Private citizens should be discouraged and prevented from taking the law into their own hands. The powers of the Popular Committees and the Popular Police should be

carefully circumscribed in order to avoid abuses. Accordingly, the laws on Public Morality should be more carefully and clearly defined to guard against arbitrary application;

(iv) All reports of abuse of power or violations of the law by official bodies should be investigated thoroughly. Public authorities determined to have committed violations in the course of their duties should be held accountable for their actions and brought to justice. In this respect, the National Security Act should be amended to end the immunity of national security agents from prosecution for human rights violations committed in the course of duty;

(v) The Law of Evidence should be immediately amended to exclude as evidence confessions extracted under torture;

(vi) The Government of the Sudan should take measures to ensure that all citizens have access to an appropriate legal system and to protect the heterogeneous nature of the legal system. The efforts of the Chief Justice to codify customary law should be commended and supported;

(vii) The Government of the Sudan should encourage the development of a strong, independent legal profession: all harassment and intimidation of lawyers should cease. The Advocacy Act should be amended to remove it from the purview of the Registrar of Trade Unions, so as to guarantee the Bar Association's independence from the Government;

(viii) The Government of the Sudan should promptly publish all laws in the Official Gazette in order to allow public access to them. The Government should also support the publication of the Sudan Law Journal and Reports, an important resource for the legal profession and a requirement for the standardization of the legal system.

(b) Recommendations on the judicial system

(i) In order to ensure the institutional independence of the judiciary, the state of emergency should be lifted so that control of the judiciary will be removed from the authority of the head of State;

(ii) The selection and promotion of judges should be based solely on objective factors such as ability, experience and integrity, in accordance with the United Nations Basic Principles on the Independence of the Judiciary. Discrimination on the basis of political opinion, religion or gender in the selection of judges should be expressly forbidden. The Government should take immediate measures to augment the number of females and non-Muslims in the judiciary;

(iii) The disciplining and dismissal of judges should be regulated by objective procedures that will protect judges from arbitrary punishment or dismissal. Decisions in disciplinary, suspension or removal proceedings should be subject to independent review, in accordance with the United Nations Basic Principles on the Independence of the Judiciary;

(iv) There should be judicial supervision of all pre-trial measures regarding arrest, detention, release on bail, searches, surveillance and seizure. The judiciary should have sole responsibility for issuing arrest warrants, search warrants and decisions regarding release on bail;

(v) Due process guarantees should be extended to all detainees, whether formally charged with an offence or not. This includes guaranteeing the legal right of a detainee to have access without delay to a lawyer of his or her own choosing, a limit on the duration of detention without trial and judicial supervision of detention procedures. Provisions of emergency law which allow indefinite or prolonged periods of incommunicado detention should be amended;

(vi) All detainees should be held at registered detention facilities with access to legal representation. The operation of secret interrogation facilities by the security services must be terminated;

(vii) The special court system should be abolished; all cases should be tried in the normal court system using procedures established by law without interference from the executive;

(viii) Procedures within the Public Order Courts should be amended in order to conform to international standards for a fair trial, including the right to legal representation, adequate time and facilities for preparation of defence and the right of appeal. If procedures are not reformed, the Public Order Courts should be discontinued.

5. The Lawyers Committee urges the Commission on Human Rights to continue to monitor the Sudan's failure to fulfil its obligations under international law and guarantee human rights protections, particularly in its criminal justice system.

6. The Lawyers Committee regrets the fact that on his recent visit to the Sudan in January 1997, the Special Rapporteur on the Sudan, Mr. Gaspár Biró, was asked to leave the country earlier than planned. The Committee calls upon the Government of the Sudan to allow the Special Rapporteur to complete his mission at the earliest possible date.